

### REMARKS

Claims 1-3, 5, 7, 8, 18-20, 30-33, and 36-62 are pending, with claims 1, 19, and 31 being independent. Claims 4, 6, 9-17, 21-29, 34, and 35 have been canceled. Claims 1, 5, 7, 8, 18-20, and 31 have been amended. Claims 36-62 have been added. No new matter has been introduced.

### Interview Summary

Applicants thanks Examiners Lee and Kindred for the personal interview with applicants' representative, Hussein Akhavannik, conducted on March 24, 2008. During the interview, applicants' representative and Examiners Lee and Kindred discussed the deficiencies of Monteiro (U.S. Patent No. 6,119,163) and Marks (U.S. Pat. Pub. No. 2001/0053944) in view of independent claim 1 and proposed claim 9. As reflected by the Interview Summary, Examiners Lee and Kindred agreed that neither Monteiro, Marks, nor any proper combination of these references describes or suggests the features of proposed claim 9, now included in dependent claim 38.

### Election/Restriction

In response to the restriction of claim 35 by original presentation, claim 35 has been canceled.

### Claim Rejections Under 35 U.S.C. § 103

*Claims 1-3, 5-11, 13-23 and 25-34*

Claims 1-3, 5-11, 13-23 and 25-34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Monteiro in view of Marks. Applicants respectfully request reconsideration

and withdrawal of the rejection of claims 1-3, 5-11, 13-23 and 25-33 because none of Monteiro, Marks, or any proper combination of Monteiro and Marks describes or suggests accessing, by a client, electronic media locally stored at the client in response to detecting the occurrence of a network failure, as recited in amended independent claim 1.

Monteiro discloses a scalable architecture for delivery of real-time information over a communications network. *See* Monteiro at Abstract. The architecture may include a Network Control Center that provides the information for delivery. *See* Monteiro at col. 4, lines 25-26. The information that may be delivered includes a main audio feed and a particular advertising stream. *See* Monteiro at col. 8, lines 16-20. The advertising stream may be delivered in advance of the regular programming. *See* Monteiro at col. 8, lines 20-27. The advertising stream may then be embedded in the stream of regular programming upon receipt of a cueing signal embedded in the stream of regular programming. *See* Monteiro at col. 8, lines 20-27.

However, Monteiro does not describe or suggest inserting the advertising stream in response to detecting the occurrence of a network failure. Therefore, Monteiro does not describe or suggest accessing, by a client, electronic media locally stored at the client in response to detecting the occurrence of a network failure, as recited in amended independent claim 1.

Marks discloses a method for playing audio program playlists. *See* Marks at Abstract. Marks discloses that a listener may choose an option on a control device to reduce or remove DJ and other non-revenue producing talk. *See* Marks at [0039]; Fig. 1. However, Marks does not describe or suggest accessing, by a client, electronic media locally stored at the client in response to detecting the occurrence of a network failure, as recited in amended independent claim 1.

Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of amended independent claim 1 and its dependent claims 2, 3, 5, 7, 8, 18, 32, 33, and 36-47.

Amended independent claims 19 and 31 recite subject matter that is similar to that discussed above in connection with amended independent claim 1, and do so in the context of a system. Accordingly, at least for the reasons discussed above in connection with amended independent claim 1, applicants respectfully request withdrawal of the rejection of independent claims 19 and 31 and their respective dependent claims.

*Claims 4, 12, and 24*

Claims 4, 12, and 24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Monteiro in view of Marks and further in view of Rowlands (U.S. Patent App. Pub. No. 2002/0083346). Claims 4, 12, and 24 have been canceled with this amendment, which obviates this rejection.

New Claims

New claims 36-62 each depend directly or indirectly from either amended independent claim 1, 19, or 31. At least for the reason of that dependency and the reasons noted above with respect to amended independent claims 1, 19, and 31, applicants respectfully submit that new claims 36-62 are allowable. Because each claim recites additional features, however, the individual consideration of each new claim on its own merits is respectfully requested.

Conclusion

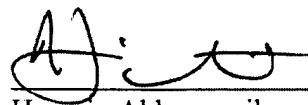
Applicants respectfully submit that all claims are in condition for allowance.

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

The fees in the amount of \$1,060 for the Request for Continued Examination (RCE) fee (\$810) and the Excess Claims fee (\$250) are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 3/26/2008



Hussein Akhavannik  
Reg. No. 59,347

Fish & Richardson P.C.  
1425 K Street, N.W.  
11th Floor  
Washington, DC 20005-3500  
Telephone: (202) 783-5070  
Facsimile: (202) 783-2331